

REMARKS/ARGUMENTS

The rejections presented in the Office Action dated December 11, 2008 (hereinafter Office Action) have been considered. Claims 1-26 and 67-74 remain pending in the application. Claims 67-74 are withdrawn by the Examiner as directed to a non-elected invention. Reconsideration of the pending claims and allowance of the application in view of the present response is respectfully requested.

The Applicant thanks the Examiner for participating in a telephonic interview on February 11, 2009. Claims 1, 3-7, 9, 18, 21, and 23-24 are amended herein in the manner discussed during the telephonic interview. No new matter is added.

Claims 1-26 are rejected based on 35 U.S.C. §112, second paragraph, as being indefinite. The §112, second paragraph rejection stems from recitation of myocardium penetrating components in claim 1. Claim 1 has been amended herein in the manner discussed with the Examiner to overcome the §112, second paragraph. This amendment positively recites what was already in the claim (myocardium penetration), and therefore this amendment is not narrowing and was not necessitated by prior art. The Applicant respectfully requests reconsideration and withdrawal of the §112, second paragraph rejection of claims 1-26.

Claims 1-6, 8-9, 12-14, 16-19, and 24-26 are rejected based on 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,336,252 to Cohen (hereinafter "Cohen").

As discussed in the interview, Cohen does not teach myocardium penetration in the manner of claim 1. For example, the Field of the Invention section in Col. 1, Cohen states:

The present invention relates generally to cardiac defibrillation systems and more particularly to methods and equipment for implanting cardiac defibrillation leads in the pericardial space between the pericardium and myocardial tissue of a mammalian heart. (Emphasis added).

Cohen further provides that:

“Using only currently available techniques, pericardial access on defibrillation patients can be a dangerous proposition. The pericardium is both very thin and close to the heart. In most patients it is difficult to cut or puncture the pericardium without also inadvertently cutting or perforating the myocardium (the heart muscle) or a coronary vessel.” (Col. 3, Lines 48-54)

...

If a sharp instrument were to impinge upon a beating heart, an unintended perforation of a coronary artery or myocardial wall could occur. Such perforation would result in massive bleeding, endangering the life of the patient, and probably necessitating emergency open chest surgery. (Col. 4, Lines 11-16)

As such, Cohen does not teach myocardium penetration in the manner of claim 1, and specifically avoids myocardium penetration. The Applicant respectfully submits that Cohen does not teach all elements of claim 1. Therefore, the rejection of this claim, and the rejection of the claims that depend therefrom (claims 2-6, 8-9, 12-14, 16-19, and 24-26) must be withdrawn.

Claim 20 is rejected based on 35 U.S.C. §102(b) as being anticipated by, or in the alternative, based on 35 U.S.C. §103(a) as obvious over Cohen. Claims 9-11, 15 and 21-23 are rejected based on 35 U.S.C. §103(a) as being unpatentable over Cohen. Claim 7 is rejected based on 35 U.S.C. §103(a) as being unpatentable over Cohen in view of U.S. Patent No. 5,716,392 to Bourgeois et al. (hereinafter “Bourgeois”).

Claims 7, 9-11, 15, and 20-23 depend from independent claim 1. All elements of claim 1 have not been accounted for in a sustainable rejection, as discussed above. Therefore, the above listed rejections of claims 7, 9-11, 15, and 20-23, which depend from claim 1, must be withdrawn.

To the extent the Applicant has not responded to any characterization in the Office Action of the asserted art or of the Applicant’s claimed subject matter, or to any application

in the Office Action of the asserted art to any claimed subject matter, the Applicant wishes to make clear for the record that any such lack of response should not be interpreted as an acquiescence to such characterizations or applications. A detailed discussion of each of the Office Action's characterizations, or any other assertions or statements beyond that provided above is unnecessary in view of the present response. The Applicant reserves the right to address in detail any such assertions or statements in future prosecution.

The Applicant respectfully submits that the application is in condition for allowance, timely notification of which is kindly requested. Authorization is given to charge Deposit Account No. 50-3581 (GUID.077PA) any necessary fees for this filing. If the Examiner believes it necessary or helpful, the Examiner is invited to contact the undersigned attorney to discuss any issues related to this case.

Respectfully submitted,

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